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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate Future)	RM-8117, RM-8030
Development of SMR Systems in the)	RM-8029
800 MHz Frequency Band)	
)	
and)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive)	
Bidding)	
800 MHz SMR)	

To: The Commission

REPLY COMMENTS

Eden Communications, Inc. (Eden), by and through counsel, hereby offers reply comments in the above-captioned rule making. Eden owns and operates SMR facilities in and about the Salinas, California, area and therefore, is qualified to make meaningful comment and to assist the Commission in engaging in its efforts to make an informed and reasoned decision in this matter.

Administrative Efficiency Will Not Be Gained

Eden respectfully cautions the Commission not to be seduced by the siren song being sung by Nextel Communications, Inc. (Nextel) and various industry trade associations. These entities are luring the Commission with false promises of administrative efficiencies, which, in reality, will prove elusive. Eden asks that the

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Commission change its course before it and the SMR industry are dashed onto the jagged rocks and destroyed.

The Commission is being bewitched by the idea that it could solve or eliminate a great deal of its administrative costs merely by changing from the current scheme of regulation to one which would have, at most, four dominant licensees per market area. These licensees would gradually subsume all or most of the smaller, local operators currently providing service. Therefore, as the story goes, the Commission's work load would be drastically reduced, which must be in the public interest. This specious conclusion is a bifurcated sham.

The public interest lies in the provision of affordable service of a type which consumers deem desirable. Analog dispatch operators provide such a service which has found universal acceptance throughout the Country. Analog dispatch was not displaced by Cellular. Cellular is becoming a mature industry that has proved its worth and yet, it has not eliminated the need or desire for analog dispatch communications. Clearly, analog dispatch service is needed and desired throughout the country.

Yet, Nextel would have the Commission believe that such is not the case. That analog dispatch customers are just waiting for a new service to come along and serve their unserved needs. Despite later disavowals by Morgan O'Brien, ESMR service was intended to be the "third cellular network." Nextel never explained how and why this

third cellular network could or would displace analog dispatch -- something that *real* cellular quite obviously could not do.

Now O'Brien has publicly disavowed his previous boast. ESMR is not to be akin to cellular. If it is not to be akin to cellular such that it might compete with or be deemed substantially similar to cellular, then it is not entitled to the regulatory parity or symmetry for which Nextel is so loudly clamoring.

It is clear from news reports that Nextel is not entirely certain *itself* which type of provider it intends to be, however, it appears quite sure that it requires a great deal of spectrum to be it, whatever that is. Morgan O'Brien has often compared the ESMR business to the trading of commodities. He has touted the value of spectrum, any spectrum, to a telecommunications company. It is apparent that Nextel is really in the business of operating spectrum warehouses, not viable telecommunications facilities. Its operations often include "place holder" transmission facilities, which provide no true service, but are intended instead merely to complete construction of sites at the bare minimum to hold channels. It is apparent that Nextel's operation is more akin to a network of silos, holding precious grain apart from a starving industry of legitimate analog operators.

Eden would not be so concerned about the delusions of one megalomaniacal corporation suffering an identity crisis, except that corporation has caught the ear of the

Commission, and seems intent on destroying Eden and other small companies like Eden for its own aggrandizement. Eden cannot sit idly by and watch this happen.

Eden has complied with the rules and the stated intentions for the past methods of regulating SMR operations. It identified a need for dispatch services in its market and applied for its license. It hit the streets selling service until it could justify, in accord with Commission Rules, additional licenses and additional spectrum.¹ Those were the rules of the game and that was how Eden played, building a modestly successful business serving the needs of its community.

The natural progression for Eden would be to expand to other area markets or "graduate" to other service offerings, possibly radio common carriage. Or, Eden could be approached by a competitor and reach an agreement to sell the fruits of its labor. That's how it's done in every other industry, and that's how it's supposed to be done in telecommunications.

Nextel would have the Commission change all that. It would have the Commission force Eden to give up that which it fought long and hard to achieve and

¹ Indeed, Eden has been forced to fight hard for what it has received. Due to its location in California, its applications automatically are placed on the Northern California wait list, despite Eden's diligent efforts to identify spectrum available in its particular area. Eden, more often than not, has been forced to provide costly, detailed, engineering studies and argue its case with petition after petition before the Commission ultimately grants it a license. Ironically, while Eden has had to fight so hard for its authority to operate, Nextel has not been placed on any wait list.

place it on a silver platter engraved, no doubt, with the name *Nextel*. There is no mention nor contemplation of compensation for the time, energy and money spent by Eden to wrest its licenses from the Northern California wait list. All of Eden's efforts would have been for naught.

It is ironic that the Commission is even contemplating the MTA licensing proposal and auction and forced frequency migration. Throughout the PCS auctions, the Commission has constantly been providing credits and other benefits to women and minorities and small businesses, all in an effort aimed at attracting new entrants to the communications industry. Congress demanded it do so, recognizing that the communications industry is either more difficult to "crack" than others, or that it's more unfriendly than other industries.

Analog dispatch SMR is possibly the only segment of the industry where it is possible for women and minorities and small business to enter without special preference. Having entered, it is possible to build a business and become more successful and perhaps "graduate" to other, more capital intensive service offerings. At \$125 per application, the entry costs are not too steep, even when coupled with the costs of the equipment.

The Commission is suffering from the ill-effects of speculators who filed thousands of applications in response to pie in the sky promises of a pot of gold at the

end of the rainbow. Part of that speculation was fueled by the common man's desire to become part of the most exciting industry in the country -- telecommunications. There are certain individuals who will drop out and lose their investment, primarily due to the fact that they should have investigated where they were putting their money in the first place.

But there are those people who will try to make lemonade out of their \$7,500 or \$8,000 lemon. They will try to build an SMR system, whether conventional or trunked, and they will try to sell service. They may even like it, or become hooked, and remain in the communications field. They may invest more money and build or buy new stations. No matter which door they came in, they are *new entrants* into the communications industry. They are what Congress demanded the Commission go out and find. They are the people that Nextel would have the Commission throw out on their ear.²

It makes no sense to Eden to reconfigure a mature industry. The Commission did not reconfigure Cellular for the benefit of PCS. It makes no sense to Eden to provide benefits to encourage entrants into one segment of the telecommunications industry and

² Certainly, there were unscrupulous operators who took advantage of the Commission's processes and filed thousands of applications for systems on which they had no realistic expectation of offering service. These sham operators can and will be culled out by the Commission's channel take back policies, however, the Commission should not penalize those who "invested" their money unwittingly and have now become determined to recoup their investment by starting a legitimate business.


raise unnecessary obstacles, if not an outright bar, to those same entrants in another segment of the industry. There are other ways to encourage the entry of legitimate operators while discouraging those sham operators whose only interest is making a quick buck. The proposals outlined in the FNPRM will not accomplish that goal but will instead wreak havoc on small businesses that have been endeavoring to provide a service to the public.

Conclusion

For all the foregoing reasons, and because the public interest will best be served by doing so, Eden respectfully requests that the Commission reject the proposals put forth in the above-captioned proceeding.

Respectfully submitted,
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By


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Dated: March 1, 1995

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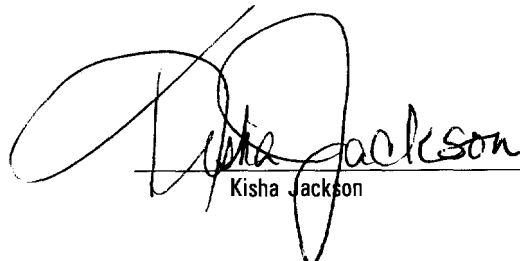
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